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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,102	11/19/2003	Phillip George Skeba	AMT-9804C	7311
34431 7590 08/08/2007 HANLEY, FLIGHT & ZIMMERMAN, LLC 150 S. WACKER DRIVE SUITE 2100 CHICAGO, IL 60606			EXAMINER TRAN, PHUC H	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 08/08/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/717,102

Applicant(s)

SKEBA ET AL.

Examiner

PHUC H. TRAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 27-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6687261. Although the conflicting claims are not identical, they are not patentably distinct from each other because following:

For claims 27-32, the patent '61 discloses a method of operating a bandwidth allocation system for a twisted pair telephone wire local loop system, comprising the steps of: (a) receiving a bandwidth allocation request at an office controller (see claim 6 of Patent '61, lines 45-46); (b) selecting an unused section of frequency (see claim 6 of Patent '61, line 50); (c) determining if the unused section of frequency has sufficient bandwidth (see claim 6 of Patent '61, line 51); (d) when the unused section of frequency has sufficient bandwidth, performing a link quality

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analysis (see claim 6 of Patent '61, lines 53-54); and (e) when the link quality analysis is greater than a predetermined minimum, defining the unused section of frequency as available (see claim 6 of Patent '61, lines 55-56); (f) when the frequency band is available, determining a filter scheme and a frequency translation scheme (see claim 6 of Patent '61, lines 58-59); (g) transmitting the filter scheme and the frequency translation scheme to a subscriber controller over a control channel (see claim 6 of Patent '61, lines 60-63); (h) sending a bandwidth allocation available message by the office controller (see claim 6 of Patent '61, lines 64-65).

A bandwidth allocation system for a twisted pair telephone wire local loop system, comprising: a subscriber digital filter system connected to the twisted pair telephone wire (see claim 1 of Patent '61, lines 16-17); an office digital filter system connected to the twisted pair telephone wire (see claim 1 of Patent '61, lines 20-21); and an office controller sending a control signal to the office digital filter system, wherein the office controller receives a bandwidth allocation request and calculates a digital filter coefficients necessary to realize a digital filter to satisfy the bandwidth allocation request (see claim 1 of Patent '61, lines 22-27); a subscriber controller sending a control signal to the subscriber digital filter system (see claim 1 of Patent '61, lines 18-19); wherein the office controller transmits the digital filter coefficients to the subscriber controller over a control channel (see claim 1 of Patent '61, lines 23-24).

Although, claims 27 and 29 merely broaden the scope of the Patent by eliminate the term "determining if a frequency band is available on a selected twisted pair telephone line. It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re karlson, 136 USPQ 184 (CCPA).

Also note Ex Parte Raine, 168 USPQ 375 (bd. App. 1969); omission of a reference element whose function is not need would be obvious to one skilled in the art.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 21-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Mannering et al. (U.S. Patent No. 6137839).

- With respect to claims 21-26, Mannering teaches a multiple channel system for a twisted pair telephone wire local loop system (e.g. Fig. 2e shows the wire local loop), comprising: a subscriber gateway system has an n-channel transceiver connected to the twisted pair telephone wire, the n-channel transceiver sending and receiving multiple independent

channels wherein the n-channel transceiver has plurality demodulators (e.g. block 210 in Fig. 2a and Fig. 1 block 195);

an n-channel transceiver at a central office connected to the twisted pair telephone wire, the n-channel transceiver sending and receiving multiple independent channels wherein the n is greater than two (block 220 2a); and

a local circuit switch connected to an output of a n-channel receiver at the central office (e.g. the switching matrix in Fig. 2a); and a digital subscriber line access multiplexer connected to the output of the n-channel receiver at the central office (e.g. xDSL in Fig. 2b).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McHale et al. (U.S. Patent No. 6385203 B2) discloses communication server apparatus and method.

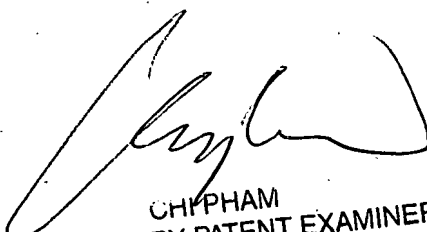
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H. TRAN whose telephone number is (571) 272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Phuc Tran
Assistant Examiner
Art Unit 2616

P.t
8/5/07


CHIPPHAM
SUPERVISORY PATENT EXAMINER

8/6/07